

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TENNESSEE

AT WINCHESTER

TONY A. GUNTER,

Plaintiff,

v.

BEMIS COMPANY, INC.,

Defendant.

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4:16-CV-37

Chattanooga, Tennessee
April 14, 2017

BEFORE: THE HONORABLE TRAVIS R. McDONOUGH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

HEATHER MOORE COLLINS
ANNE HUNTER WILLIAMS
Collins & Hunter, PLLC
7000 Executive Center Drive, Suite 320
Brentwood, Tennessee 37027

FOR THE DEFENDANT:

JONATHAN O. HARRIS
THOMAS W. WHITWORTH
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
SunTrust Plaza, Suite 1200
401 Commerce Street
Nashville, Tennessee 37219

JURY TRIAL
FIFTH DAY OF TRIAL

1 (The proceedings were held outside the presence of
2 the jury, as follows:)

3 THE COURT: All right. Good morning --

4 MR. HARRIS: Good morning.

5 THE COURT: -- everybody. The first thing I want to
6 do is -- before I charge the jury, is just to confirm what I
7 think everybody already knows with regard to the remedies
8 available to the jury, that I'm going to find that
9 reinstatement in this case is not feasible. The -- although
10 the plaintiff testified that he would like to have his job
11 back, the defendant has put on proof that it's not, in its
12 opinion, safe to do so.

13 And while the defendant has pointed to the
14 plaintiff's request to be reinstated as a potential reason not
15 to make front pay available as a remedy, I don't -- I have not
16 heard the defendant put on any evidence that -- or make a
17 request that it has actually requested that the Court consider
18 reinstatement. So I'll give you-- Are there any objections
19 to that ruling?

20 MR. HARRIS: Your Honor, the defendants, again,
21 object. And it's very clear that reinstatement is the
22 preferred remedy. That's what the law says. The reason this
23 man was fired was because of our determination he could not be
24 reasonably accommodated. But if the jury disagrees with us,
25 then they're necessarily finding that he's qualified to perform

1 the essential functions of the job and therefore disagreeing
2 with our view of whether he could do it or not. He says he
3 wants his job back. It is not our burden to prove
4 reinstatement is feasible; it's the plaintiff's burden to show
5 why it is not. And just like we follow doctors' orders, we
6 follow judges' orders. If the Judge says he goes back, he goes
7 back. That's our objection.

8 THE COURT: Okay. Anything from the plaintiff?

9 MS. COLLINS: No, Your Honor.

10 THE COURT: Okay.

11 MS. COLLINS: What you said makes sense.

12 THE COURT: All right. We have, after a few
13 machinations and some more work, I think, arrived at a much
14 better verdict form than we discussed yesterday. You have a
15 copy of that verdict form, which is what will go back to the
16 jury. And I will give you a chance now to make any objections
17 to the form that you've not already made. Are there any
18 objections?

19 MR. HARRIS: Your Honor, with respect, we -- we
20 object to the verdict form. As far as the good faith defense,
21 it is our view that because this entire case revolves around a
22 reasonable accommodation scenario, the good faith defense
23 should apply to all the claims in this case. And so we lodge
24 that objection.

25 THE COURT: Okay.

1 MR. HARRIS: And that's it.

2 THE COURT: Okay.

3 All right. Ms. Collins, Ms. Hunter, anything to
4 add?

5 MS. COLLINS: Nothing to add, Your Honor.

6 THE COURT: All right. With regard to the jury
7 instructions, we made a few little changes -- couple of little
8 changes this morning. Let me just review those with you and
9 give you an opportunity to object if there is an issue.

10 So on Page 30, Jury Instruction Number 27, I have
11 changed -- in the last sentence, I'm using the word -- or the
12 phrase "actual damages" instead of "compensatory damages,"
13 which was on the version that we discussed yesterday. Is
14 there any objection to that change?

15 MR. WHITWORTH: No objection.

16 MS. COLLINS: No objection.

17 THE COURT: All right. And then we did not discuss
18 this, but on Page 33, Jury Instruction Number 30, it previously
19 read "marshal," and I'm going to make that "courtroom deputy."
20 So tell me now if you have an objection.

21 And on Page 34, within the same instruction, as we
22 dis- -- as we -- as you know, I'm going to, at the very end,
23 tell the jury that I will -- quote, "I will now review the
24 verdict form with you," and then I'll go over the verdict form
25 that we've just discussed.

1 Are there any objections to those changes?

2 MR. WHITWORTH: No objection.

3 MS. COLLINS: No objection.

4 THE COURT: All right. Anything else to take up
5 before we bring the jury in and charge the jury?

6 MS. COLLINS: Your Honor, could I have an updated set
7 of the jury instructions? I can't seem to find mine from last
8 night. I'm sorry.

9 THE COURT: You should have the one from this
10 morning, right? Didn't we pass that out?

11 MS. COLLINS: No. I got the verdict form.

12 THE COURT: Okay. Do you have a new version,
13 Mr. Harris?

14 MR. HARRIS: I don't think we do, Judge.

15 THE COURT: Let's make sure that he does, too,
16 before --

17 MS. HUNTER: Yeah, if there was more copies, that
18 would be great.

19 MR. HARRIS: And, Judge, just from a procedural
20 standpoint, after you read in the objections, so that we can
21 preserve them, how do you handle that? Can we just say, "Your
22 Honor, we renew our objections as previously discussed"?

23 THE COURT: After the instructions?

24 MR. HARRIS: Yeah.

25 THE COURT: I think you've preserved your objections

1 to the substance. When I ask you for objections after the
2 charge --

3 MR. HARRIS: Uh-huh.

4 THE COURT: -- what I'm really asking is, did I mess
5 up reading that. And you can let me know.

6 MR. HARRIS: And the cautious person inside of me,
7 reading Sixth Circuit case law, thinks we have to renew.

8 THE COURT: I'm-- If you need to do that, I'll --
9 that's fine.

10 MR. HARRIS: Okay.

11 THE COURT: Just wait until we dismiss the jury.

12 MR. HARRIS: Okay.

13 THE COURT: All right. Okay. Let's bring them in,
14 Ms. Hinton.

15 THE COURTROOM DEPUTY: Okay.

16 (Brief pause.)

17 (The jury entered the courtroom, and the proceedings
18 continued as follows:)

19 THE COURT: All right. Thank you, ladies and
20 gentlemen. Good morning. At this point I'm going to give you
21 your charge. I'm going to read the jury instructions to you.
22 This will probably, I'd say, take more or less a half hour. So
23 be patient, and listen intently, please.

24 Members of the jury, now it is time for me to
25 instruct you about the law that you must follow in deciding

1 the case. At the start of this case I gave you some
2 guidelines on the applicable law. I will now instruct you on
3 the law that you should use in reaching your verdict. These
4 instructions on the applicable law supersede any earlier
5 statements on the law which I gave you at the start of the
6 case.

7 I will start by explaining your duties and the
8 general duties that -- general rules that apply in every civil
9 case. Then I will explain some rules that you must use in
10 evaluating particular testimony and evidence. And last I will
11 explain the law relating to the claims made in the plaintiff's
12 case. Please listen very carefully to everything I say.

13 You have two main duties as jurors. The first is to
14 decide what the facts are from the evidence that you saw and
15 heard here in court. Deciding the facts is your job, not
16 mine, and nothing that I have said or done during this trial
17 was meant to influence your decision about the facts in any
18 way.

19 Your second duty is to take the law that I give you,
20 apply it to the facts, and decide whether the plaintiff has
21 established that the defendant terminated his employment
22 because of his disability, in violation of the ADA, the
23 Americans with Disabilities Act.

24 It is my job to instruct you about the law, and you
25 are bound by the oath that you took at the beginning of the

1 trial to follow the instructions that I give you, even if you
2 personally disagree with them. This includes the instructions
3 that I gave you before and during the trial and these
4 instructions. All the instructions are important, and you
5 should consider them together as a whole.

6 The lawyers have talked about the law during their
7 arguments, but if what they said is different from what I say,
8 you must follow what I say. What I say about the law
9 controls.

10 Perform these duties fairly. Do not let any bias,
11 sympathy, or prejudice that you may feel toward one side or
12 the other influence your decision in any way. The Court, the
13 parties, and the public expect that you will carefully and
14 impartially consider all of the evidence in the case, follow
15 the law as stated to you by the Court, and arrive at a verdict
16 that you think is just, fair, and right under the proof.

17 Now, let's talk for a moment about evidence. You
18 are to decide this case only from the evidence which was
19 presented at this trial. The evidence consists of (1) the
20 sworn testimony of the witnesses who have testified, both in
21 person and by deposition, (2) the exhibits that were received
22 and marked as evidence, (3) any facts to which all the lawyers
23 have agreed or stipulated, and (4) any other matters that I
24 have instructed you to consider as evidence.

25 By contrast, the questions of a lawyer are not to be

Court's Charge to the Jury

1 considered by you as evidence. It is the witness's answers
2 that are evidence, not the questions directed at them. At
3 times a lawyer may have incorporated into a question a
4 statement which assumed certain facts to be true, and asked
5 the witness if the statement was true. If the witness denies
6 the truth of the statement, and if there is no evidence
7 proving that assumed fact to be true, then you may not
8 consider it to be true simply because it was contained in the
9 lawyer's question.

10 Testimony that has been stricken or excluded is not
11 evidence and may not be considered by you in rendering your
12 verdict. Also, if certain testimony was received for a
13 limited purpose only, such as for the purpose of assessing a
14 witness's credibility, you must follow the limiting
15 instructions I have given.

16 Arguments by lawyers are not evidence because the
17 lawyers are not witnesses. What they have said to you in
18 their opening and closing statements is intended solely to
19 help you understand the evidence in order to reach your
20 verdict. If your recollection of the facts differs from the
21 lawyers' statements, it is your recollection which controls.

22 To be evidence, exhibits must be received into
23 evidence. Exhibits marked for identification but not admitted
24 are not evidence nor are materials brought forth only to
25 refresh a witness's recollection.

1 Finally, statements which I may have made concerning
2 the quality of the evidence are not evidence. It is for you
3 alone to decide the weight, if any, to be given to the
4 testimony you have heard and the exhibits you have seen.

5 There are two types of evidence, direct evidence and
6 circumstantial evidence. Direct evidence is simply evidence,
7 like the testimony of an eyewitness which, if you believe it,
8 directly proves is fact. If a witness testified that he saw
9 it raining outside, and you believed him, that would be direct
10 evidence that it was raining.

11 Circumstantial evidence is simply a chain of
12 circumstances that indirectly prove a fact. If someone walked
13 into the courtroom wearing a raincoat covered with drops of
14 water and carrying a wet umbrella, that would be
15 circumstantial evidence from which you could conclude that it
16 was raining.

17 It is your job to decide how much weight to give to
18 direct and circumstantial evidence. The law makes no
19 distinction between the weight that you should give to either
20 one or say that one is any better evidence than the other.
21 You should consider all the evidence, both direct and
22 circumstantial, and give it whatever weight you believe it
23 deserves.

24 You should use your common sense in weighing the
25 evidence. Consider it in light of your everyday experience

1 with people and events, and give it whatever weight you
2 believe it deserves.

3 You are the sole and exclusive judges of the
4 credibility or believability of the witnesses who have
5 testified in this case. You must decide which witnesses you
6 believe and how important you think their testimony is. You
7 are not required to accept or reject everything a witness
8 says. You are free to believe all, none, or part of a
9 person's testimony.

10 In deciding which testimony you believe, you should
11 rely on your own common sense and everyday experience. There
12 is no fixed set of rules to use in deciding whether you
13 believe a witness, but it may help you to think about the
14 following questions:

15 (1) Was the witness able to see, hear, or be aware
16 of the things about which the witness testified?

17 (2) How well was the witness able to recall and
18 describe those things?

19 (3) How long was the witness watching or listening?

20 (4) Was the witness distracted in any way?

21 (5) Did the witness have a good memory?

22 (6) Did the witness look and act while tes- -- how
23 did the witness look and act while testifying?

24 (7) Was the witness making an honest effort to tell
25 the truth, or did the witness evade questions?

1 (8) Did the witness have any interest in the outcome
2 of the case?

3 (9) Did the witness have any motive, bias, or
4 prejudice that would influence the witness's testimony?

5 (10) How reasonable was the witness's testimony when
6 you consider all of the evidence in the case?

7 (11) Was the witness's testimony contradicted by
8 what that witness has said or done at another time, by the
9 testimony of other witnesses, or by other evidence?

10 (12) Has there been evidence regarding the witness's
11 intelligence, respectability, or reputation for truthfulness?

12 (13) Has the witness's testimony been influenced by
13 any promises, threats, or suggestions?

14 (14) Did the witness admit that any part of the
15 witness's testimony was not true?

16 Now, a witness may be discredited or impeached by
17 contradictory evidence or by evidence that at some other time
18 the witness has said or done something or has failed to say or
19 do something that is inconsistent with the witness's present
20 testimony. If you believe any witness has been impeached and
21 thus discredited, you may give the testimony of that witness
22 such credibility, if any, you think it deserves.

23 If a witness is shown knowingly to have testified
24 falsely under oath about any material matter, you have the
25 right to distrust such witness's other testimony, and you may

Court's Charge to the Jury

1 reject all of the testimony of that witness or give it such
2 credibility as you may think it deserves.

3 An act or omission is knowingly done if voluntarily
4 and intentionally and not because of mistake or accident or
5 some other innocent reason.

6 Now, the law does not require any party to call as
7 witnesses all persons who may have been present at any time or
8 place involved in the case or who may appear to have some
9 knowledge of the matters in issue in this trial. Nor does the
10 law require that any -- any party to produce as exhibits all
11 papers and all things mentioned in the evidence in the case.

12 Let me talk to you for a moment about the burden of
13 proof. The plaintiff has the burden of proof in this case.
14 The party who has the burden of proof must carry that burden
15 by a preponderance of the evidence. This means simply the
16 greater weight of the evidence. It may be helpful -- if may
17 be helpful to envision a set of balancing scales. After
18 considering all the proof on a particular element of the
19 plaintiff's case, the scales must be tipped in favor of the
20 plaintiff on that issue for the plaintiff to prevail on that
21 issue. If the weight of the evidence is equally balanced, or
22 if you are unable to determine which side of an issue has the
23 preponderance, the plaintiff does not prevail on that issue.

24 A preponderance of the evidence, thus, means such
25 evidence as, when considered and compared with that opposed to

1 it, has more convincing force and produces in your minds a
2 belief that what is sought to be proved is more likely true
3 than not true. In other words, to establish a claim by a
4 preponderance of the evidence merely means to prove that the
5 claim is more likely so than not so. Mere speculation or mere
6 possibility is not sufficient to support a judgment in
7 plaintiff's favor.

8 In determining whether any fact in issue has been
9 proved by a preponderance of the evidence, you should consider
10 the testimony of all the witnesses, regardless of who may have
11 called them, and all the exhibits received in evidence,
12 regardless of who may have produced them.

13 Let me talk a bit more about preponderance of the
14 evidence. As I said, it's the plaintiff's burden to prove
15 every element of his claim by a preponderance of the evidence.
16 If the plaintiff should fail to establish any element of his
17 claim by a preponderance of the evidence, you should find for
18 defendant as to that claim.

19 To establish something by a preponderance of the
20 evidence means to prove that something is more likely so than
21 not so. In other words, a preponderance of the evidence means
22 such evidence as, when considered and compared with the
23 evidence opposed to it, has more convincing force and produces
24 in your minds belief that what is sought to be proved is more
25 likely true than not true. This standard does not require

1 proof to an absolute certainty, since proof to an absolute
2 certainty is seldom possible in any case.

3 You may have heard of the term proof beyond a
4 reasonable doubt. That is a stricter standard that applies in
5 criminal cases. It does not apply in civil cases such as
6 this. You should therefore put it out of your minds.

7 Now, this case is about -- this case should be
8 considered and decided by you as an action between persons of
9 equal worth and equal standing in the community. Corporations
10 like the defendant are entitled to the same fair trial at your
11 hands as a private individual. All persons, including
12 individuals and corporations, stand equal before the law, and
13 are to be dealt with as equals in a court of justice.

14 I also instruct you that sympathy or hostility must
15 not enter into your deliberation as jurors no matter what your
16 sympathy or hostility may lead you to think. Neither sympathy
17 nor hostility has any place in a trial of a lawsuit or in the
18 making up of your minds as to what your verdict shall be. Do
19 not permit any such emotional considerations to enter into
20 your deliberations at all.

21 So let's talk about the causes of actions. The
22 Americans with Disabilities Act, referred to frequently as the
23 ADA, prohibits an employer from discriminating against an
24 employee with a disability if that employee is otherwise
25 qualified to perform the essential functions of his or her job

1 with or without reasonable accommodation. In this case
2 plaintiff claims that defendant discriminated against him by
3 (1) failing to engage in an interactive process with him in
4 good faith, (2) failing to provide him with a reasonable
5 accommodation, and (3) terminating his employment because of
6 disability. Defendant denies the plaintiff's claims.

7 To prove a claim for discriminatory discharge in
8 violation of the ADA, plaintiff must first prove by a
9 preponderance of the evidence that (1) during the relevant
10 time frame of his employment with defendant, plaintiff had a
11 disability—and I will define the term disability for you
12 later—(2) he was qualified to perform all of the essential
13 functions of his job as a press assistant, with or without a
14 reasonable accommodation—again, I'll define the terms
15 essential function and reasonable accommodation for you—and
16 (3) defendant terminated his employment because of a
17 disability.

18 If you find that plaintiff has proven all three of
19 these elements by a preponderance of the evidence, your
20 verdict on plaintiff's discharge claim must be in favor of
21 plaintiff. If you find that plaintiff has failed to prove all
22 three of these elements by a preponderance of the evidence,
23 your verdict on plaintiff's discharge claim must be in favor
24 of defendant.

25 At all times the burden of persuasion is on the

1 plaintiff to prove that the defendant terminated his
2 employment because of disability discrimination.

3 To prove his claim that defendant violated the ADA
4 by failing to provide him with a reasonable accommodation of a
5 disability, plaintiff must prove by a preponderance of the
6 evidence that (1) he had a disability at the time he was
7 employed by the defendant, (2) he was qualified -- he was a
8 qualified individual able to perform the essential functions
9 of his job as a press assistant, (3) he requested that
10 defendant provide him with a reasonable accommodation of his
11 disability, and (4) defendant failed to provide a reasonable
12 accommodation.

13 If you find that plaintiff has proven all four of
14 these elements by a preponderance of the evidence, your
15 verdict must be in favor of plaintiff. If you find that
16 plaintiff has failed to prove all four of these elements by a
17 preponderance of the evidence, your verdict must be in favor
18 of defendant.

19 Let's talk about the definition of disabled. In
20 order to prove his claim that defendant failed to provide him
21 with a reasonable accommodation and/or discriminated against
22 him based on a disability, plaintiff must first prove that he
23 was disabled as defined by the ADA.

24 A disability is a physical or mental impairment that
25 substantially limits one or more of the major life activities.

1 You should apply the term disability broadly. As amended by
2 the ADAAA, another act, the ADA defines major life activities
3 as including, but not limited to, caring for oneself,
4 performing manual tasks, seeing, hearing, eating, sleeping,
5 walking, standing, lifting, bending, speaking, breathing,
6 learning, reading, concentrating, thinking, communicating, and
7 working. A major life activity also includes the operation of
8 a major bodily function, including, but not limited to, the
9 immune system, cell growth, digestion, elimination (bowel and
10 bladder), the nervous system, the brain, the respiratory
11 system, circulation, the endocrine system, and the
12 reproductive system.

13 In determining whether plaintiff's impairment
14 substantially limits a major life activity, you should compare
15 his ability to perform a major life activity with that of the
16 average person. In doing so, you should consider (1) the
17 nature and severity of the impairment, (2) how long the
18 impairment will last or is expected to last, and (3) the
19 permanent or long-term impact or expected impact of the
20 impairment. Temporary impairments with little or no long-term
21 impact are not sufficient. In determining whether an
22 impairment substantially limits a major life activity, you
23 must consider the impairment without regard to the effects of
24 such measures as medication, therapies, or surgery. In doing
25 so, you may consider evidence of the expected course of a

Court's Charge to the Jury

1 particular disorder without medication, therapies, or surgery.

2 Let's discuss the definition of substantially
3 limited. Under the ADA an impairment substantially limits a
4 major life activity if it prevents or severely restricts
5 plaintiff in comparison to the average person in the general
6 population. Working is a major life activity. An impairment
7 need not prevent or significantly or severely restrict the
8 individual from performing a major life activity in order to
9 be considered substantially limiting. Nonetheless, not every
10 impairment will constitute a disability within the meaning of
11 this section. Only impairments with permanent or long-term
12 impact are disabilities under the ADA.

13 Now let's discuss the definition of qualified.
14 Under the ADA, plaintiff was qualified if he had the skill,
15 experience, education, and other requirements for the job and
16 could do the job's essential functions, either with or without
17 a reasonable accommodation. You should only consider
18 plaintiff's abilities at the time when defendant placed him
19 out of work in July 2014.

20 Not all job functions are essential. Essential job
21 functions are a job's fundamental duties. In deciding whether
22 a function is essential, you may consider the reasons the job
23 exists, the number of employees defendant has to do that kind
24 of work, the degree of specialization the job requires,
25 defendant's judgment about what is required (for example, his

Court's Charge to the Jury

1 job description), the consequences of not requiring an
2 employee to satisfy that job -- that function, and the work
3 experience of others who held the position.

4 Now let's discuss the definition of essential
5 function. In order to be otherwise qualified for the position
6 under the ADA, plaintiff must prove that he could perform the
7 essential functions of his job with or without a reasonable
8 accommodation. The phrase essential functions of the job
9 means the fundamental duties of the job the plaintiff was
10 required to perform.

11 In determining whether a job duty is an essential
12 function, you may consider (1) the employer's judgment as to
13 which functions are essential, (2) the written job description
14 for the position, (3) the amount of time spent performing the
15 function, (4) the consequences of not requiring the employee
16 to perform the function, (5) the work experience of past
17 employees in the job, (6) the current work experience of
18 persons with similar jobs; and/or (7) who has performed the
19 function in practice. A job function that is only
20 occasionally performed may still be necessary and considered
21 an essential function of the job. No one of these factors is
22 controlling.

23 Let's discuss reasonable accommodation. Under the
24 ADA, to accommodate a disability is to make some change that
25 will let a person with a disability perform his job. An

Court's Charge to the Jury

1 accommodation is reasonable if it is effective and its costs
2 are not clearly disproportionate to the benefits that it will
3 produce. A reasonable accommodation may include a change in
4 such things as ordinary work rules, facilities, conditions, or
5 schedules, but does not include elimination or change of
6 essential job functions, assignment of essential job functions
7 to other employees, or lower productivity standards. However,
8 shifting marginal duties to other employees who can easily
9 perform them is a reasonable accommodation.

10 Plaintiff bears the burden of proposing an
11 accommodation and showing that the accommodation is
12 objectively reasonable. An accommodation that eliminates an
13 essential function of the job is not reasonable.

14 The ADA does not require employers to create new
15 jobs or displace existing employees from their positions in
16 order to accommodate a disabled individual.

17 Once an employer is aware of an employee's
18 disability and an accommodation has been requested, the
19 employer must discuss with the employee whether there is a
20 reasonable accommodation that will permit him to perform the
21 job. Both the employer and the employee or applicant must
22 cooperate in this interactive process in good faith.

23 Now let's discuss damages. I will now give you
24 instructions about how to calculate damages. You should not
25 consider the fact that I am giving you this instruction as

Court's Charge to the Jury

1 suggestion -- as suggesting any view of mine as to which party
2 is entitled to your verdict in this case or that I think you
3 should award any damages. Those are decision that are
4 entirely for you to make. I am giving you these instructions
5 solely for your guidance in the event that you find in favor
6 of plaintiff on his claim against defendant -- on his claims
7 against defendant -- on a claim against defendant. The fact
8 that I do does not in any way mean that I think you should
9 award any damages. That is entirely for you to decide.

10 If you find that defendant has violated plaintiff's
11 rights under the ADA, then you must determine the amount of
12 damages that defendant's actions have caused plaintiff.
13 Plaintiff has the burden of proving damages by a preponderance
14 of the evidence. You may award as actual damages an amount
15 that reasonably compensates plaintiff for any lost wages and
16 benefits, taking into consideration any increases in salary
17 and benefits, including pension, that plaintiff would have
18 received from defendant had plaintiff not been terminated.

19 Back pay damages, if any, apply from the time the
20 plaintiff was placed out of work without pay until the date of
21 your verdict. Collateral source benefits, such as employment
22 compensation, Social Security benefits, and pension benefits
23 received by the plaintiff should not -- should not be offset
24 or taken out of any back pay award the jury may deem
25 appropriate.

Court's Charge to the Jury

1 The defendant has raised the defense that plaintiff
2 had a duty to make reasonable efforts to obtain other
3 employment after his separation from his employment with it in
4 order to mitigate his damages. To do so, defendant must prove
5 that plaintiff failed to mitigate his damages. Defendant may
6 satisfy its burden only if it establishes that (1) that were
7 substantially equivalent positions which were available, and
8 (2) plaintiff failed to use reasonable care and diligence in
9 seeking such positions. However, an employee who is unable to
10 work due to a disability is not precluded from receiving back
11 pay when the employer caused the disability.

12 At times throughout this trial you have heard
13 reference to Social Security retirement benefits and Social
14 Security disability benefits. You should not consider any
15 such evidence in deciding whether to find for the plaintiff or
16 for the defendant on any claim, and you should not consider
17 any such evidence in calculating damages in the event that you
18 find that the defendant violated the ADA.

19 You have heard testimony that the plaintiff planned
20 to work until age 67. However, how long the plaintiff would
21 have worked is disputed. Based on the evidence, you may find
22 that the plaintiff would have worked until age 67, or you may
23 find that the plaintiff would not have worked that long.
24 Either way, the availability of Social Security disability or
25 Social Security retirement benefits must have no impact on

Court's Charge to the Jury

1 your decisions concerning liability or damages. There is no
2 evidence that the plaintiff qualifies for Social Security
3 disability benefits or Social Security retirement benefits at
4 this time. In particular, you should ignore Page 2 of
5 Plaintiff's Exhibit 21 in this regard. This document is not
6 evidence that the plaintiff presently qualifies for any Social
7 Security benefits.

8 If plaintiff proves by a preponderance of the
9 evidence that defendant terminated him in violation of the
10 ADA, you may also calculate separately, as future damages, a
11 monetary amount equal to the present value of the wages and
12 benefits that plaintiff would have earned had he not been
13 terminated for the period from the date of your verdict until
14 the date when plaintiff would have voluntarily resigned or
15 obtained other employment.

16 If you determine plaintiff is entitled to future
17 lost wages, you must consider the following in arriving at an
18 amount: First, plaintiff's prospects for another job; second,
19 the length of time that it should take plaintiff to get such a
20 job; third, the number of years remaining before plaintiff
21 would most probably retire.

22 If you determine that an award of front pay is
23 appropriate, you must also reduce any award to its present
24 value by considering the interest plaintiff could earn on the
25 amount of the award if plaintiff had made a relatively

Court's Charge to the Jury

1 risk-free investment. The reason that you must make this
2 reduction is because an award of an amount representing future
3 loss of earnings is more valuable to plaintiff if plaintiff
4 receives it today than if plaintiff received it in the future
5 when plaintiff would otherwise have earned it. It is more
6 valuable because plaintiff can earn interest on it for the
7 period of time between the date of the award and the date
8 plaintiff would have earned the money. Thus, you should
9 adjust the amount for -- of any award for future loss of
10 earnings by the amount of interest that plaintiff can earn on
11 that amount in the future.

12 Collateral source benefits such as employment
13 compensation, Social Security benefits, and pension benefits
14 received by the plaintiff should not be offset, taken out of,
15 any back pay award -- excuse me, front pay award the jury may
16 deem appropriate.

17 Let's discuss compensatory damages. If you find
18 that plaintiff was discriminated against based on his
19 disability, then you must determine an amount that you find by
20 a preponderance of the evidence is fair compensation for his
21 damages. You may award compensatory damages only for injuries
22 that plaintiff proves were caused by defendant's allegedly
23 wrongful conduct. The damages that you award must be fair
24 compensation, no more and no less. You may award damages for
25 any pain, suffering, or mental anguish that plaintiff

Court's Charge to the Jury

1 experienced as a consequence of defendant's alleged
2 discrimination.

3 No evidence of the monetary value of such intangible
4 things as pain and suffering has been, or need be, introduced
5 into evidence. You should consider the nature, character, and
6 seriousness of any pain and suffering, inconvenience, or
7 mental anguish that the plaintiff may have experienced, as
8 well as the extent and duration or whether it required medical
9 treatment. There is no exact standard for fixing the
10 compensation to be awarded for these elements of damage;
11 however, any award you make should be fair in light of the
12 evidence presented at trial.

13 In determining the amount of damages that you decide
14 to award, you should be guided by common sense. You must use
15 sound judgment in fixing an award of damages, drawing
16 reasonable inferences from the facts and evidence. You may
17 not award damages based on sympathy, speculation, or
18 guesswork. On the other hand, the law does not require that
19 plaintiff prove the amount of his damages with mathematical
20 precision but only with as much definiteness and accuracy as
21 circumstances permit.

22 Plaintiff claims the acts of defendant were done
23 with malice or reckless indifference to the plaintiff's
24 federally protected rights, so as to entitle the plaintiff to
25 an award of punitive damages in addition to the other damages.

Court's Charge to the Jury

1 In some cases punitive damages may be awarded for
2 the purpose of punishing a defendant for its wrongful conduct
3 and to deter others from engaging in similar wrongful conduct.
4 However, an employer may not be held liable for punitive
5 damages because of discriminatory acts on the part of its
6 managerial employees where those acts by such employees are
7 contrary to the employer's own good faith efforts to comply
8 with the law by implementing policies and programs designed to
9 prevent such unlawful discrimination in the workplace.

10 An award of punitive damages would be appropriate in
11 this case only if you find for plaintiff and then further find
12 from a preponderance of the evidence, first, that a management
13 official of defendant personally acted with malice or reckless
14 indifference to plaintiff's federally protected rights, and,
15 second, that defendant itself had not acted in good faith --
16 had not acted in a good faith attempt to comply with the law
17 by adopting policies and procedures designed to prohibit such
18 discrimination in the workplace.

19 If you find that punitive damages should be assessed
20 against defendant, you may consider the financial resources of
21 defendant in fixing the amount of such damages.

22 Now, if you return a verdict for plaintiff but he
23 has failed to prove actual injury and therefore is not
24 entitled to actual damages, then you must award nominal
25 damages of one dollar. A person whose federal rights were

Court's Charge to the Jury

1 violated is entitled to a recognition of that violation, even
2 if he suffered no actual injury. Nominal damages of one
3 dollar are designed to acknowledge the deprivation of a
4 federal right, even where no actual injury occurred. However,
5 if you find actual injury, you must award actual damages, as I
6 instructed you, rather than nominal damages.

7 In this case defendant claims it made good faith
8 efforts to determine whether it could reasonably accommodate
9 plaintiff. In cases where a discriminatory practice involves
10 the reasonable accommodation provision of the ADA, actual and
11 punitive damages may not be awarded where the employer
12 demonstrates good faith efforts in consultation with the
13 employee with a disability who has informed the covered entity
14 that accommodation is needed, to identify and make a
15 reasonable accommodation that would provide such individual
16 with an equally effective opportunity and would not cause an
17 undue hardship on the operation of the business.

18 To prove this defense to damages, defendant has the
19 burden of proving by a preponderance of the evidence that
20 defendant made a good faith effort, in consultation with
21 plaintiff, to try to identify a reasonable accommodation.

22 When considering what damages, if any, to award
23 plaintiff, you may not compensate him due to the fact that the
24 plaintiff was injured at work. The ADA is not the mechanism
25 by which an employee may seek compensation for a workplace

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1 injury. Instead, Tennessee has a separate worker's
2 compensation law that provides that exclusive remedy under
3 which an employee may seek compensation for his on-the-job
4 injury. Your job in this case is to determine whether the
5 decision to terminate his employment was a violation of the
6 ADA and, if so, what damages he suffered as a result of the
7 loss of the employment.

8 Now, finally, any verdict must represent the
9 considered judgment of each juror. In order to return a
10 verdict, it is necessary that each juror agree thereto. In
11 other words, your verdict must be unanimous. It is your duty
12 as jurors to consult with one another and to deliberate in an
13 effort to reach agreement if can you do so without violence to
14 the individual judgment.

15 Each of you must decide the case for yourself, but
16 only after an impartial consideration of the evidence in the
17 case with your fellow jurors. In the course of your
18 deliberations, do not hesitate to reexamine your own views and
19 change your opinion if convinced it is erroneous. But do not
20 surrender your honest conviction as to the weight or effect of
21 the evidence solely because of the opinion of your fellow
22 jurors or for the mere purpose of returning a verdict. You
23 are the judges, the judges of the facts. Your sole interest
24 is to seek the truth from the evidence in the case.

25 Upon retiring to the jury room, you should first

Court's Charge to the Jury

1 select one of your number to act as your foreperson who will
2 preside over your deliberations and will speak for you here in
3 court. A verdict form has been prepared for your convenience.
4 When you have reached unanimous agreement as to your verdict,
5 you will have your foreperson complete, date, and sign the
6 verdict form and then return to the courtroom. If during your
7 deliberations you should desire to communicate with the Court,
8 please reduce your message or question to writing, signed by
9 the foreperson, and pass the note to the courtroom deputy, who
10 will bring it to my attention. I will then respond as
11 promptly as possible, either in writing or by having you
12 return to the courtroom so that I can address you orally. I
13 caution you, however, with regard to any message or question
14 you might send, that you should never state or specify the
15 vote of the jury at the time.

16 I will now review the verdict form with you.

17 You'll have a verdict form in the deliberation room,
18 and it will have questions for you to answer, first about
19 claims.

20 "Claim Number 1. Do you find that plaintiff has
21 proven by a preponderance of the evidence all of the elements
22 required to establish that the defendant terminated the
23 plaintiff because of his disability? There is a box for yes,
24 a box for no. Check one.

25 "Claim 2. Do you find that plaintiff has proven by

Court's Charge to the Jury

1 a preponderance of the evidence all of the elements required
2 to establish that defendant failed to engage in the
3 interactive process in good faith, as required under the
4 Americans with Disabilities Act?"

5 Again, a box for yes, a box for no.

6 "Claim 3. Do you find that plaintiff has proven by
7 a preponderance of the evidence all of the elements required
8 to establish that defendant failed to accommodate plaintiff in
9 compliance with the Americans with Disabilities Act?"

10 Again, a box for yes, a box for no.

11 "Defenses. Number 4, Do you find that the defendant
12 has proven by a preponderance of the evidence that it
13 demonstrated good faith efforts, in consultation with
14 plaintiff, to identify a reasonable accommodation?

15 There is a note that reads, "You cannot answer yes
16 to Question Number 4 if you answered yes to Question Number
17 2." Then there is a box for yes and a box for no.

18 With regard to damages, there is a note, "If you
19 answered no to Question Number 1, Question Number 2, and
20 Question Number 3, stop and have the foreperson sign and date
21 this form on Page 5. If you answered yes to Question
22 Number 1, Question Number 2, or Question Number 3, proceed to
23 Questions 5, 6, 7, 8, and 9.

24 "Question Number 5 is, Do you find that plaintiff
25 has proven by a preponderance of the evidence that he should

Court's Charge to the Jury

1 be awarded back pay? There is a box for yes, a box for no.
2 If your answer is yes, it reads, "The jury awards plaintiff
3 back pay damages in the amount of" blank "dollars in
4 connection with the following claims. Check all that apply.

5 "Claim 1, Claim 2, Claim 3.

6 "Question Number 6. Do you find that plaintiff has
7 proven by a preponderance of the evidence that he should be
8 awarded front pay? There's a box for yes, box for no.

9 "If your answer is yes, the jury awards plaintiff
10 front pay damages in the amount of" blank "dollars in
11 connection with the following claims. Check all that apply.

12 "Claim 1, Claim Number 2, Claim Number 3.

13 "Question 7. Do you find that plaintiff has proven
14 by a preponderance of the evidence that he should be awarded
15 compensatory damages?" Box for yes, box for no.

16 "If your answer is yes, the jury awards plaintiff
17 compensatory damages in the amount of" blank "dollars in
18 connection with the following claims. Check all that apply.

19 "Claim Number 1, Claim Number 2, Claim Number 3.

20 "Note: If you answered yes to Question 5, Question
21 6, or Question 7, skip Question 8, and proceed to Question 9."

22 Question 8 reads, "Do you find that plaintiff has
23 proven by a preponderance of the evidence that he should be
24 awarded nominal damages? Box for yes, box for no.

25 "If your answer is yes, the jury awards plaintiff

Court's Charge to the Jury

1 nominal damages in the amount of" blank "dollars in connection
2 with the following claims. Check all that apply.

3 "Claim 1, Claim 2, Claim 3.

4 "Do you find -- to Question Number 9, do you find
5 that plaintiff has proven by a preponderance of the evidence
6 that he should be awarded punitive damages?"

7 There is a box for yes, a box for no.

8 "If your answer is yes, the jury awards punitive
9 damages in the amount of" blank "dollars in connection with
10 the following claims. Check all that apply.

11 "Claim 1, Claim 2, Claim 3."

12 The last page tells you, "Have the foreperson sign
13 and date this form and return it to the court officer." There
14 is a blank for the foreperson's signature and a blank for the
15 date.

16 All right, ladies and gentlemen, I'm going to ask
17 you to go to the deliberation room. And once the courtroom
18 deputy comes back and provides you with certain documents, you
19 may begin your deliberation at that time.

20 (The jury exited the courtroom, and the proceedings
21 continued as follows:)

22 THE COURT: All right. Have a seat, please.

23 Okay. I will give you an opportunity in a moment to
24 do whatever you think you need to do to preserve objections,
25 but on Page 12 I did not repeat the third paragraph. Does

Court's Charge to the Jury

1 anybody have an objection to that? It was exactly the same,
2 and I just noticed that.

3 MS. COLLINS: No objection.

4 THE COURT: All right.

5 The defense?

6 MR. WHITWORTH: No objection.

7 THE COURT: Okay. I also, two or three times,
8 changed compensatory to actual. Did anybody have a problem
9 with that?

10 MR. WHITWORTH: No, Your Honor.

11 MS. COLLINS: Your Honor, the only concern that I had
12 was when you read it in conjunction with the good faith effort.

13 THE COURT: Which page are you on?

14 MS. COLLINS: On Page 31. I think that time it
15 should have been compensatory and punitive and not actual.

16 THE COURT: Yeah. You're right. Let's bring the
17 jury back in.

18 (Brief pause.)

19 THE COURT: I'm just going to read this one, okay?

20 MS. COLLINS: Yes, Your Honor. Do they get a copy of
21 this that goes back with them?

22 THE COURT: We'll change it. We'll let you look at
23 it.

24 MS. COLLINS: I mean, it's written correctly. That
25 was just one of the ones that was verbally...

Court's Charge to the Jury

1 THE COURT: Yeah.

2 (Brief pause.)

3 (The jury entered the courtroom, and the proceedings
4 continued as follows:)

5 THE COURT: Giving you some exercise this morning.
6 Thank you for coming back.

7 Before you start your deliberations, I want to
8 correct one mistake I made. I'm going to reread a portion of
9 what I instructed you on before, and I want you to -- it will
10 be correct in the written instructions that you receive, but I
11 wanted to read it correctly as well. And I want you to follow
12 it as I'm about to read it and as it will be reflected on the
13 written copy.

14 In this case defendant claims that it made good
15 faith efforts to determine whether it could reasonably
16 accommodate plaintiff. In cases where a discriminatory
17 practice involves the reasonable accommodation provisions of
18 the ADA, compensatory and punitive damages may not be awarded
19 where the employer demonstrates good faith efforts, in
20 consultation with the employee with a disability who has
21 informed the covered entity that accommodation is needed, to
22 identify and make a reasonable accommodation that will provide
23 such individual with an equally effective opportunity and
24 would not cause an undue hardship on the operation of the
25 business. To prove this defense to damages, the defendant has

1 the burden of proving by a preponderance of the evidence that
2 defendant made a good faith effort, in consultation with
3 plaintiff, to try to identify a reasonable accommodation.

4 Okay. So now that you have this correct version of
5 that portion of the instructions, I will once again ask you to
6 retire. And once you get access to the documents that
7 Ms. Hinton is about to give you, you may begin your
8 deliberations.

9 (The jury exited the courtroom, and the proceedings
10 continued as follows:)

11 THE COURT: All right. Good catch, Ms. Collins.
12 Thank you.

13 All right. So let me just review what nits we're
14 going to correct.

15 On Page 12 we're going to take out the third
16 paragraph, the repeat.

17 On Page 27 back should say front. And I said
18 "front" when I read it to them, but I'm going to change back
19 to front on Page 27.

20 And I am going to, on 28, change -- at the
21 second-to-last line change their to his.

22 On Page 29, third line, compensatory will be
23 substituted by actual.

24 And that's it, I believe. Anybody have a problem
25 with any of those?

1 (Brief pause.)

2 THE COURT: Defense?

3 Plaintiff?

4 MR. WHITWORTH: No objection to those changes.

5 THE COURT: Okay.

6 MR. WHITWORTH: Out of an abundance of caution, we
7 respectfully renew our previously stated objections.

8 THE COURT: Okay.

9 Ms. Collins, anything further?

10 MS. COLLINS: No, Your Honor.

11 THE COURT: Okay.

12 MS. COLLINS: No objection.

13 THE COURT: All right. There is also a typographical
14 error. On Page 2 it said "is" instead of his. We'll fix that
15 as well. Okay?

16 All right. We'll quickly modify these instructions,
17 and then Ms. Hinton will take them back for us. Is there
18 anything else until we begin waiting, or continue to wait?
19 Any other issues that you want to raise?

20 MS. COLLINS: No, Your Honor.

21 THE COURT: All right. Stay close. Do we have cell
22 numbers for everybody? If we don't, will you leave them with
23 Ms. Hinton?

24 MS. COLLINS: We will.

25 THE COURT: I'll let you know when we hear something.

1 We're in recess.

2 (Recess for deliberations.)

3 THE COURT: All right. Counsel --

4 Heith, I grabbed the wrong document. Get the
5 question.

6 THE CLERK: Sir?

7 THE COURT: Go get the question.

8 We have a question from the jury.

9 (Brief pause.)

10 THE COURT: All right. Here's the question. I want
11 counsel -- well, come up. Why don't you-all come up. I just
12 noticed...

13 (A sidebar discussion was held between the Court and
14 counsel, as follows:)

15 THE COURT: Here's the question. I was about to say,
16 "Regarding questions, if we decide to award in plaintiff's
17 favor, is the amount awarded once for all three claims, or
18 awarded for each Claim 1, 2, and 3?"

19 Right before I started to read it -- I think that's
20 an S, but it could be a 5, "Regarding Question 5" or
21 "Regarding questions." So I think I'm going to ask -- get --
22 send a communication back asking them what the second --
23 whether that's "Questions" or "Question 5," and then we'll
24 answer this question for them. Okay?

25 MR. HARRIS: Okay.

1 THE COURT: Everybody on board with that,
2 Ms. Collins?

3 MS. COLLINS: Yeah. I mean, you're just getting
4 clarification, right?

5 THE COURT: Yeah. I'm not telling them --

6 MS. COLLINS: Okay. Yeah. I mean, I'm this close to
7 being slightly brain dead. (Indicating.) So I'm trying to
8 like...

9 (IN OPEN COURT)

10 THE COURT: We need to ask the jury, the second -- I
11 don't want -- we're going to do it in writing, but the second
12 word is either "Questions" or "Question 5," and I can't tell
13 for sure. So we're going to send a question back. Do you have
14 a form going back? Do you have it, Heith? Do you have the
15 form?

16 THE LAW CLERK: I'll-- Do you want me to type it up?

17 THE COURT: Just say -- let's ask, "Does your
18 communication begin with the words 'Regarding --' quote,
19 'Regarding questions,' end quote, or, quote, 'Regarding
20 Question 5,'" end quote, question mark.

21 THE LAW CLERK: How many copies?

22 THE COURT: Make three copies.

23 (Brief pause.)

24 THE COURT: Everybody on board with that?

25 MR. HARRIS: Yes, Your Honor.

1 MS. COLLINS: Yes, sir.

2 THE COURT: The only -- I'm just going to change
3 "Foreperson" to "Judge" and sign it and give it to them.

4 MS. COLLINS: Okay.

5 (Brief pause) --

6 THE COURT: All right. Ms. Hinton, let the attorneys
7 see that before you -- just let them make sure they're okay
8 with the --

9 THE COURTROOM DEPUTY: Yes. I'm sorry.

10 THE COURT: -- signed copy.

11 (Brief pause.)

12 MS. COLLINS: Yes, ma'am.

13 THE COURT: All right. Mr. Harris, Ms. Collins, both
14 good?

15 MR. HARRIS: Yes, Your Honor.

16 MS. COLLINS: Yes, Your Honor.

17 (Brief pause.)

18 THE COURT: I don't think this will take long to
19 answer that, so...

20 (Brief pause.)

21 THE COURT: So their response is, "Regarding
22 question, no S, no 5." I'm going to ask them just to rewrite
23 their question.

24 MR. HARRIS: Can they type it?

25 THE COURT: All right. Just --

1 MS. COLLINS: So the -- so we could just disregard
2 the first part of that and just read the question?

3 THE COURT: I don't -- I mean, I'll let you look at
4 this. I don't think this -- I don't think that they answered
5 our question, at least the one I asked. So let's say, "Please
6 rewrite your question."

7 MS. COLLINS: Neatly, not cursive.

8 THE COURT: No, say, "Rewrite your communication,"
9 instead of "question." "Please rewrite your communication."

10 THE LAW CLERK: "Original communication"?

11 THE COURT: No.

12 (Brief pause.)

13 THE COURT: Ms. Hinton, will you let them see that?
14 The attorneys.

15 THE COURTROOM DEPUTY: Oh, the attorneys. Sorry.

16 (Brief pause.)

17 MR. HARRIS: Okay.

18 MS. COLLINS: Yes, ma'am.

19 THE COURTROOM DEPUTY: Okay.

20 (Brief pause.)

21 THE COURT: Okay. Now they said, "Please disregard.
22 Thank you." So let's wait and see if they ask anything else in
23 writing. They have -- they did ask Ms. Hinton for a
24 calculator, and the usual practice is to provide that. I'm
25 having one brought down. We should have that in a moment.

1 (Brief pause.)

2 THE COURT: Anybody want to inspect the calculator?

3 MR. HARRIS: (Moving head from side to side.)

4 THE COURT: Okay. We're going to provide the jury a
5 calculator. And we're in recess again. Thank you.

6 (Brief recess.)

7 THE COURT: All right. Ladies and gentlemen, I've
8 been handed a note that we have a verdict, the jury's reached a
9 verdict. So my plan is to call them back in, when Ms. Hinton
10 gets back, and receive the verdict. Is there anything else to
11 do before we do that?

12 MS. COLLINS: (Moving head from side to side.)

13 THE COURT: All right.

14 (Brief pause.)

15 (The jury entered the courtroom, and the proceedings
16 continued as follows:)

17 THE COURT: All right. It's my understanding-- Have
18 a seat. It's my understanding that the jury has reached a
19 verdict. I would -- I believe Ms. Post is the foreperson.

20 Ms. Post, has the jury unanimously agreed to a
21 verdict?

22 THE FOREPERSON: Yes, Your Honor.

23 THE COURT: You have? Why don't you stand and answer
24 audibly so we can pick it up for the record.

25 THE FOREPERSON: Yes, Your Honor, we've reached a

1 verdict.

2 THE COURT: All right. Thank you. Will you hand
3 that verdict form to Ms. Hinton, please.

4 (Brief pause.)

5 THE COURT: All right. Thank you.

6 Ms. Hinton, will you please read the verdict.

7 THE COURTROOM DEPUTY: "Verdict Form.

8 "Question Number 1. Claim 1. Do you find that the
9 plaintiff has proven by a preponderance of the evidence all of
10 the elements required to establish that the defendant
11 terminated plaintiff because of his disability?

12 "Yes.

13 "Claim Number 2. Do you find that the plaintiff has
14 proven by a preponderance of the evidence all of the elements
15 required to establish defendant failed to engage in the
16 interactive process in good faith as required under Americans
17 with Disabilities Act?

18 "Yes.

19 "Claim Number 3. Do you find that the plaintiff has
20 proven by a preponderance of evidence all of the elements
21 required to establish that the defendant failed to accommodate
22 plaintiff in his compliance with the Americans with
23 Disabilities Act?

24 "Yes.

25 "Question Number 4. Do you find that the defendant

1 has proven by a preponderance of the evidence that it has
2 demonstrated good faith efforts, in consulting with the
3 plaintiff, to identify a reasonable accommodation?

4 "No.

5 "Damages. Do you find that the defendant [sic] has
6 proven by a preponderance of the evidence that he should be
7 awarded back pay?

8 "Yes.

9 "If your answer is yes, the jury awards the
10 plaintiff back pay damages in the amount of \$181,522.61.

11 "Claim Number 1, Claim Number 2, and Claim Number 3.

12 "Do you find the def- -- the plaintiff has proven by
13 a preponderance of the evidence that he should be awarded
14 front pay?

15 "Yes.

16 "If your answer is yes, the jury awards the
17 plaintiff front pay damages in the amount of \$315,000 in
18 connection with the following claims," and they checked all
19 that apply, and that's Claim Number 1, Claim Number 2, and
20 Claim Number 3.

21 "Question Number 7. Do you find that the plaintiff
22 has proven by a preponderance of the evidence that he should
23 be awarded compensatory damages?

24 "Yes.

25 "If your answer is yes, the jury awards the

1 plaintiff compensatory damages in the amount of 92,000 in
2 connection with the following claims," they checked all that
3 applied, "Claim Number 1, Claim Number 2, Claim Number 3.

4 "Question Number 8. Do you find that the plaintiff
5 has proven by a preponderance of the evidence that he should
6 be awarded nominal damages?"

7 Nothing checked there.

8 "Question Number 9. Do you find that the plaintiff
9 has proven by a preponderance of the evidence that he should
10 be awarded punitive damages?

11 "No."

12 THE COURT: All right. Thank you, Ms. Hinton.

13 Does any party want the jury -- to poll the jury?

14 MS. COLLINS: No, Your Honor. We're good.

15 MR. HARRIS: No, Your Honor.

16 THE COURT: Okay. Thank you.

17 Ms. Hinton, will you please file and record the
18 verdict.

19 THE COURTROOM DEPUTY: Yes, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury, thank
21 you, thank you all very much. I know this has taken quite a
22 chunk out of your week. You have just a few minutes left of
23 the workweek. But you've been very patient. I could tell that
24 you were paying very close attention to everything that
25 occurred. And I know that on behalf of the parties and the

1 lawyers and myself and all of my staff, we definitely
2 appreciate that.

3 This is an important role that you play.
4 Ms. Elliott may know more about this than other jurors, given
5 her husband's profession, but this is one of the things that
6 keeps our nation strong, keeps our community strong. This is
7 our way of resolving disputes without resorting to other ways
8 of resolving disputes that haven't worked nearly as well in
9 the past. And I sincerely appreciate you, each one of you,
10 for your patience and your work.

11 I'm going to discharge you. If you would wait for
12 just a moment in the jury room, I will -- I'd like to come and
13 meet you and bid you a good weekend. So give us just a minute
14 to wrap up here. I'll go ahead and dismiss you.

15 (The jury exited the courtroom, and the proceedings
16 continued as follows:)

17 THE COURT: All right. I'll remind you, Counsel,
18 that -- about Local Rule 48.1 that governs contact with jurors.
19 So, please note that, be familiar with that Rule 48.1, and make
20 sure that you follow it.

21 Is there anything else we need to take up today? I
22 know there will probably be motions later, but is there
23 anything else today that we need to do?

24 MR. HARRIS: Not today, Your Honor.

25 THE COURT: Okay.

1 Ms. Collins?

2 MS. COLLINS: No, Your Honor.

3 THE COURT: All right. Thank you all. As I said
4 before, all the lawyers did a very good job. I really
5 appreciate the way you handled yourself, the way you worked
6 together. We don't always see that. I don't want to rank you
7 as a group on -- and compare you to everybody else, but I will
8 tell you that with regard to your skills as advocates and your
9 professionalism, that you're easily at the top, and I truly,
10 truly, appreciate that.

11 MR. HARRIS: Thank you, Judge.

12 THE COURT: So we're adjourned, and we will wait to
13 hear from you. Thank you very much.

14 END OF PROCEEDINGS

15

16

17

18 I, Elizabeth B. Coffey, do hereby certify that I
19 reported in machine shorthand the proceedings in the
20 above-styled cause, and that this transcript is an accurate
21 record of said proceedings.

22

23 s/Elizabeth B. Coffey
24 Elizabeth B. Coffey,
Official Court Reporter

25